

July 2, 2007

MEMORANDUM FOR: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for AD/CVD Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Fourth Administrative Review of Honey from the People's  
Republic of China

SUMMARY:

We have analyzed the brief and rebuttal brief of interested parties in the fourth administrative review (ADR) of honey from the People's Republic of China (PRC). As a result of our analysis, we have made the following changes from the preliminary results. *See Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Review*, 72 FR 102 (January 3, 2007) (*Preliminary Results*). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of the issues in this administrative review.

Comments on the Preliminary Results

- Comment 1: Surrogate Value for Raw Honey
- Comment 2: The Use of Mahabaleshwar Honey Producers' Cooperative Financial Statements
- Comment 3: Calculation of Financial Ratios
- Comment 4: Brokerage and Handling
- Comment 5: Surrogate Value for PRC Wage Rate
- Comment 6: Clerical Errors

Background

We published the preliminary results of these reviews in the *Federal Register* on January 3, 2007. *See Preliminary Results*. The period of review (POR) is December 1, 2004, through November 30, 2005. We received a case brief from respondent Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui / respondent) on March 14, 2007. We received a rebuttal brief from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) on March 22, 2007.

Based on the determinations below, we have made revisions to the data for these final results. For details on Anhui Honghui's margin calculation, see Anhui Honghui's Final Analysis Memorandum, dated July 2, 2007, which is on file in Import Administration's Central Records Unit (CRU), room B-099 of the Department of Commerce building.

#### DISCUSSION OF THE ISSUES:

##### **Comment 1: Surrogate Value for Raw Honey**

Respondent states that the Department should calculate raw honey prices for the POR based solely on the average of prices reported in a news article from the *Financial Express* titled, "*Honey Prices Nosedive as Supply Exceed Demand*," (Nosedive article), without relying on data from EDA Rural Systems Pvt. Ltd.'s website (EDA data) as a base for the calculation, or applying the Wholesale Price Index (WPI) as an inflator. Respondent insists that the Nosedive article prices represent the most contemporaneous, geographically country-wide data, which have been corroborated by other information on the record. Respondent states that the Department's use of EDA data leads to an impermissible, anomalous calculation for the honey surrogate value. Respondent contends that the Department's determination to inflate honey prices according to the WPI is nonsensical because Indian honey prices have fallen according to the Nosedive article.

Respondent claims the Department prefers to rely on broad, representative data, rather than data from a single producer or region. However, respondent contends, it's the Department's discretion is limited by the requirement that its decisions be reasonable in light of the facts on the record. Respondent states the Department's decision, therefore, must be based on facts as a whole. See Anhui Honghui's Administrative Case Brief: Honey from the People's Republic of China to the Secretary of Commerce, dated March 14, 2007, (Respondent's Brief), at 5-9.

Respondent states that the Department has broad discretion in determining the "best available information" to be used as surrogate values. However, respondent argues, this discretion is constrained by the underlying objective of the statute, which is to obtain the most accurate dumping margins possible, according to court decisions such as *CITIC Trading Co., Ltd. v. United States*, 2003 Ct. Intl. Trade LEXIS 33, Slip Op. 2003- 23, n.12 (CIT 2003). The Department, respondent argues, cannot be said to have applied the best available information if the surrogate value it selects produces less accurate results than other potential surrogate values the Department did not select. Furthermore, respondent claims the Department is required to use surrogate values that reflect the costs respondents would incur if they were operating in a market economy. Respondent asserts that in order for the Department to avoid relying on surrogate values that lead to anomalous results, it should compare its surrogate values to benchmark prices.

Respondent provides a synopsis of the Department's methodology for deriving the raw honey surrogate value of 65.10 Rs/kg. See Respondent's Brief at 9-11. Respondent argues that using the Department's raw honey surrogate value of 65.10 Rs/kg results in a prohibitive margin. Respondent argues this prohibitive margin is not a result of the its failure to cooperate, a failure of verification, or a reduction in its sales prices to the United States. Rather, the prohibitive

margin is the result of the Department's use of EDA data to value raw honey at \$1,479/MT, and compounded by multiplying Mahabaleshwar Honey Producers' Cooperative Financial Statements (MHPC) financial ratios (overhead, SG&A and profit). See Respondent's Brief at 9-11. See also Comment 2 of the Department's discussion of its use of the MHPC data.

Respondent states that information on the record shows that the Department's preliminary determination and NV methodology leads to an impermissible and anomalous result. Specifically, respondent states that the average export price of processed honey manufactured in India during the POR was approximately \$1,010/MT, an amount which is approximately \$2,096/MT less than the surrogate value calculated by the Department. Respondent further states that the Department's methodology for calculating raw honey would indicate that beekeepers were selling raw honey to processors at prices 46 percent (\$469/MT) higher than the prices at which Indian exporters were selling processed honey to foreign importers (\$1,479/MT for raw honey compared to \$1,010/MT for processed honey resales); and that Indian exporters were selling processed honey to foreign importers at prices which were \$2,090/MT below the Department's calculation of Indian production costs (\$3,100/MT compared to \$1,010/MT).<sup>1</sup>

Respondent states that in *Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) (*ADR3 Final Results*) the Department derived a similar method for valuing raw honey (i.e. using EDA data and inflating it according to the WPI). Respondent claims that the Department rejected export data from the World Trade Atlas (WTA) and Infodrive India<sup>2</sup> (Infodrive) it submitted in the *ADR3* proceeding. Respondent states the Department's reason for not using the WTA and Infodrive data as benchmarks was because the Department considered that the export data may not accurately reflect the market value of the goods within the country of exportation. Respondent states that the Department in its *ADR3 Final Results* found that the WTA data and Infodrive data rely on values "under HTS subheading 04900000," which is a basket category composed of both raw and processed honey shipments. According to respondent, the Department has indicated in prior cases that it prefers not to use Infodrive data to derive surrogate values or to use it as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports that fall under a particular HTS subheading. Respondent states that it continues to disagree with the Department's rationale in the *ADR3* proceeding of not relying on Infodrive and WTA data to derive surrogate values, and asks the Department to reconsider its position for these final results. Respondent asks the Department to consider using the Nosedrive article to base a raw honey surrogate value, and that the additional

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<sup>1</sup> Respondent derived its figures from an extract in its submission dated February 6, 2007 at Exhibit 6, which consists of an extract from a website named Infodrive India (Infodrive), (<http://www.infodriveindia.com/data>), for POR 4. Respondent explains this extract was limited to sales of honey during the POR for which Infodrive specified the quantity in metric tons of honey exported from India. The quantity reported in this Exhibit represent 72 percent of all Indian exports of merchandise classified in HS subheading 04090000 during the POR (7344 MT of 10,131 MT). See Respondent's Brief at 12. See also Anhui Honghui submission at Exhibit 1, dated February 6, 2007.

<sup>2</sup><http://www.infodriveindia.com/>

export data it submitted from Infodrive and WTA are evidence that the Department has relied upon artificially high honey costs because the EDA website data represented only a single province in India for a period prior to the POR. In addition, respondent states that its benchmark proposal is similar to the Department's benchmark analysis in the *Final Determination of Antidumping Duty Investigation: Barium Carbonate from the Peoples Republic of China*, Issues and Decision Memorandum, 68 FR 45677 (August 6, 2003) at Comment 1c and Comment 2, (*Barium Carbonate*), in which the Department considered export data to be a valid benchmark for Indian domestic coal prices.

Respondent argues that the Department is not allowed to summarily dismiss evidence merely because it "may not accurately reflect the value of the goods within the country of exportation." Rather, respondent contends, the Department is required by law to consider whether data submitted "will result in a more accurate normal value" than other data on the record, and that it cannot reject data without having a reasonable basis for the superior accuracy of one over the other. Respondent states there is no evidence on the record that India was dumping honey to all of its major foreign markets during the POR, that honey prices were subsidized, or that the export prices reported did not accurately reflect the value of processed honey sold in drums to Indian middlemen for consumption in India during the POR. *See* Respondent's Brief at 14.<sup>3</sup> Therefore, respondent emphasizes, the export data submitted on the record (*i.e.*, Infodrive and WTA) should serve as a "benchmark" for the full value of processed honey, since the data accurately reflect the value of processed honey within India for the current administrative review.

Respondent states any suggestion that Infodrive data should be ignored because they do not account for all of the imports that fall under a particular HTS subheading would be misguided. The Infodrive data in this case, according to respondent, constitutes 100 percent of Indian honey exports in which the quantities exported were reported in metric tons and 72 percent of all Indian exports of merchandise classified under HTS Subheading 04090000 during the POR (7,344 MT of 10,131.6 MT). As such, respondent contends, these data are clearly representative of Indian honey prices during the POR, especially since the Infodrive data encompasses 450 percent more honey than the EDA Website data upon which the Department relied (7,344 MT compared to 1,635 MT reported as produced on the EDA website).

Moreover, respondent points to the preliminary results of the Department's companion administrative review, for the period December 1, 2004, until November 30, 2005, on Honey from Argentina, in which the respondent reported a U.S. export price of \$942/ metric ton (MT). *See Honey from Argentina: Preliminary Results of the New Shipper Review* 71 FR67850 (November 24, 2006). Respondent states the fact that the Argentine respondent was selling processed honey to the United States at \$942/MT without dumping and that this sale price was both above cost and higher than the price at which this company was selling honey to foreign

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<sup>3</sup>Respondent also cites *Hebei Metals & Minerals Import & Export Corp. v. United States*, 28 CIT 2004 WL 1615597 (CIT 2004).

markets renders absurd the Department's conclusion that honey cost \$3,100/MT to produce in India during the same POR.

Respondent insists that the best information regarding the surrogate value of raw honey is found in the Nosedive article. Respondent states that the Department acknowledged that raw honey prices declined in the POR based on information contained in the Nosedive article, and therefore, it should have calculated raw honey prices for the POR based solely on the average of prices reported in the Nosedive Article, without relying on the EDA data as a base for the calculation. As a result, respondent contends, the raw honey price would have been 37.50 Rs/kg, rather than 65.10 Rs/kg as calculated by the Department.

Respondent asserts that the Nosedive article's credibility is superior to EDA as the Nosedive articles prices are reliable, publicly available, more broad, geographically representative, contemporaneous, and lead to more accurate results when corroborated with benchmarks and other evidence on the record.

Respondent states that the Nosedive article prices are reliable, as the Department has concluded that both the EDA website and Nosedive article constitute reliable sources of information as to prices of raw honey in India by using both sources in its calculation methodology. Respondent asserts the EDA data are a reliable source of raw honey prices in one subregion (Muzaffarpur) of one region (Bihar) in India for a period of time which ended in June 2003. Respondent states that the reliability of information in the Nosedive article is corroborated by the EDA data because the Nosedive article reports that beekeepers in Bihar sold litchi honey at a price of 75 Rs/kg in 2003, which is the same price reported in the EDA website for litchi honey in 2003. Therefore, respondent states, the fact that EDA data may be highly recommended by the Department does not mean that it is any more accurate or reliable than the Nosedive article.

Respondent points out that the Nosedive article contains data from the Bihar, Punjab, and Haryana regions of India, whereas the EDA data cover only one subregion (Muzaffarpur) of Bihar. In addition, respondent states that the Nosedive article represents production and sales of at least five times as much honey as represented by the EDA data, making the Nosedive article superior to EDA data. Furthermore, respondent states that the Department's reliance on the EDA data as the primary source of the surrogate value of raw honey skews the results and is directly contrary to the Department's policy of preferring broad-based surrogate data over data unique to one region in a surrogate country.

Respondent contends that the Nosedive article is more contemporaneous than the EDA data. Respondent points out that the EDA data report honey being sold in the Bihar region of India from 2001-2004, whereas the Nosedive article reports honey being sold from three regions from 2003-2005. Respondent refers to its February 6, 2007, submission in which it included several exhibits reporting declines in honey prices. *See* Respondent's March 14, 2007, brief at page 20, and February 6, 2007, submission. Respondent states that the corroboration of these sources confirm that raw honey prices in India peaked in the first half of 2003 and declined significantly in the second half of 2003 and throughout 2004.

Respondent states the Department's methodology for valuing raw honey fails because the calculated value of 65.10 Rs/kg remains higher than all four prices reported in the Nosedive article for 2005, and therefore, does not properly reflect the actual decline in Indian honey prices. In addition to a flawed methodology starting with EDA data, respondent states that inflating EDA data with WPI is irrational because honey prices declined since EDA data was published.

In contrast, respondent continues, the prices reported in the Nosedive article do not have any of the flaws identified with EDA data. Reliance on the Nosedive article prices, according to respondent, would result in raw honey being valued less than the average export price of Indian processed honey during the POR. Moreover, respondent states the Nosedive article prices are contemporaneous with the POR, and reflect prices in three honey producing regions. Finally, respondent contends that the Department has already concluded that the Nosedive article prices are reliable, because it reports the identical price for litchi honey sales in Bihar in 2003 as the EDA data. For the reasons stated, respondent believes the Department erred in its preliminary results relying on EDA data as the starting point to value raw honey, rather than relying on the average prices in the Nosedive article, and respectfully request the Department to reverse its Preliminary Results and value raw honey in its Final Results at 37 Rs/kg, an average of the prices specified in the Nosedive article.

In sum, respondent concludes, the Department's reliance on EDA data led to an "anomalous and facially absurd" result. Respondent points to *Zhejiang Native Produce & Animal By-Products Import & Export Corp. V. United States*, 27 CIT, 2003 WL 23015952 (2003) (*Zhejiang I*), in which respondent insists the court found the Department's methodology not in accordance with law, and should therefore, rely solely on the Nosedive article for purposes of raw honey surrogate valuation in these final results.

In rebuttal, petitioners state the Department's decision to use the EDA data to value raw honey was proper, and it should not use the alternative valuation methodology suggested by Anhui Honghui. Petitioners state that the Department examined each factor in its analysis and concluded that the EDA data were the best available information to value raw honey because they are "publicly available, quality data, and specific to the honey industry," and were sufficiently contemporaneous to enable the Department to reach a reasonable and reliable India surrogate value. In addition, petitioners state that the Department's methodology is consistent with the final results of the second and third administrative reviews, and the seventh new shipper review. Petitioners point out that Anhui Honghui does not challenge the Department's basic finding that EDA data are specific and reliable. *See* Petitioners' Rebuttal Brief at 7, dated March 14, 2007 (Petitioners' Rebuttal Brief).

Petitioners state that the preliminary results were neither absurd nor anomalous as claimed by respondent. Petitioners contend that respondent's argument that the Department valued raw honey at a price higher than the Indian export value of processed honey is flawed because the Department rejected the same argument in *ADR3 Final Results*. *See* *ADR3 Issues and Decision*

Memorandum at 12.<sup>4</sup> Specifically, petitioners point to the Department’s reasoning that export data may not accurately reflect the market value of goods within the country of exportation. Moreover, petitioners state that export prices may be driven not by the cost of production or market pricing in the exporting country, but by the price of other market factors in the countries to which the product was exported. Petitioners cite the Department’s policy set forth in *ADR3 Final Results*. Therefore, petitioners claim the Department has a general practice against using export data, particularly from Infodrive, as either a direct source for surrogate data or as a benchmark to evaluate other surrogate value sources. Petitioners state that Anhui Honghui’s request to once again ask the Department to reconsider the prices it has submitted as a benchmark for valuing raw honey from Infodrive is not proper. Petitioners state that Anhui Honghui’s claim that the Department has used export statistics as a benchmark in the *Barium Carbonate* case (*see* Respondent’s Brief at 13) is wrong, because in that case, the Department could not find an appropriate home market price for barite ore in the surrogate market. Therefore, the Department noted in that case that such export statistics may provide a useful benchmark in the world market, but it did not find such export statistics to be a useful benchmark for the home market. Contrary to its claims, petitioners state Anhui Honghui has not established that export values do not represent values for both processed and raw honey. Moreover, petitioners assert that the statistics cited by respondent demonstrate that the Infodrive data do not cover all honey exports, and that nothing that Anhui Honghui has placed on the record establishes that Infodrive export prices accurately reflect the value of goods within the country of exportation. Without any connection, petitioners state those data cannot serve as a benchmark for the surrogate value and do not undermine the surrogate value chosen. *See* Petitioners’ Rebuttal Brief at 9-12.

Petitioners contend that the data from the Nosedive article are not the most appropriate information on which to base the surrogate value for raw honey. On the contrary, petitioners state that the Department properly determined that the EDA are the most reliable data from which to derive the surrogate value for raw honey because these data cover a broad production area, and diverse honey varieties, and provide detailed information about the Indian honey industry. As such, petitioners argue that the EDA data stand in sharp contrast to the data from the Nosedive article, which provides no information on the source or method of collection for the article’s reported data, and covers fewer data points than the EDA data. Petitioners state the EDA data consist of at least seven varieties of raw honey from several farmers in various cities within the Bihar region of India, which has an annual honey production level of 4,000 metric tons and is the second largest honey producing region in India. Furthermore, petitioners cite *Geum Poong Corp. v. United States*, in which the court stated that where there exists on the record, “alternative sources of data that would be equally or more reliable...it is within Commerce’s discretion to use either set of data.”<sup>5</sup> Thus, petitioners state, even if respondent were to establish that the source it proffered was “equally or more reliable” than the EDA data,

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<sup>4</sup>*See Honey from the People’s Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) (*ADR3 Final Results*), and corresponding Issues and Decision Memorandum.

<sup>5</sup>*See Geum Poong Corp. v. United States*, 193 F. Supp. 2d 1363, 1369, 26 Ct. Int’l Trade 322 (2005).

the Department is not required to use it. Petitioners state that to the extent the Department uses any information from the Nosedive article, it should only be used to deflate the EDA data to account for the apparent decline in Indian domestic pricing. *See* Petitioners' Rebuttal Brief at 23-34.

In selecting the most appropriate surrogate value, petitioners state that the Department is not required to weigh contemporaneity more heavily than reliability. Petitioners state that the Department does not sacrifice one attribute for another, but rather seeks a balance to ensure that the information chosen is the best information available.<sup>6</sup> Petitioners state that the Department's preliminary finding that the EDA data were more reliable than the Nosedive article, and that the EDA data's lack of contemporaneity could be remedied by adjusting them to correspond with the POR, was correct. Petitioners continue that the Department did not ignore the less contemporaneous nature of the EDA data compared to the sources favored by Anhui Honghui, but rather reviewed all sources and found that while the EDA data were not the most contemporaneous, the most detailed and reliable on the record regarding Indian raw honey values. Petitioners contend that the Nosedive article is not specific enough to be the basis for the actual surrogate value, but that it does establish that Indian honey prices were falling during the POR. As a result, the Department relied on the Nosedive article to account for the relative shift in market pricing within India during the POR. Petitioners note that the Department did not find the Nosedive article constituted actual prices of raw honey in India, but rather that was a source for price trends for raw honey in India. *See* Petitioners' Rebuttal Brief at 16-18.

Petitioners state that the information from the Nosedive article is not as reliable as EDA data because it does not state the source of its data, and does not provide any information about how these data were collected, tabulated and reported. Petitioners also state the public nature of the Nosedive article is not determinative, and that it is the minimum standard for information even to be considered by the Department in determining surrogate values. In addition, petitioners argue that Anhui Honghui's claim that the Nosedive article is more representative of national honey pricing in India than the EDA data because it mentions prices for three Indian provinces that account for a larger volume of Indian honey than the EDA is misleading. Petitioners contend that broader data are only more representative if they are reliable.

While petitioners agree with the Department's methodology to use EDA data as a starting point and WPI as an inflator to value raw honey, petitioners contend that the Department should make three changes to its surrogate value methodology. First, petitioners contend that the Department should exclude the price declines for Haryana and Punjab in the Nosedive article from its analysis, because the EDA data cover only Bihar, which is India's second largest honey-producing province. According to petitioners, this change in methodology would deflate the EDA data by 2.47 percent per month over the POR. Second, petitioners contend that any deflation factor should only represent the decline in prices caused by Indian economic circumstances. Petitioners state that the decline in honey prices are due to PRC honey being dumped. Petitioners suggest that the Department adjust the deflator downward to remove the

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<sup>6</sup>*See Hangzhou Spring Washer Co., Ltd. v. United States*, 29 CIT \_\_, \_\_, 387 F. Supp. 2d 1236, 125 (2005).

impact of low-priced PRC honey imports to India, which drove down the India surrogate values for raw honey. Third, petitioners state the Department should continue to use the WPI inflation methodology, as it has in several past segments, to account for general inflation in India between 2003 and 2005, which would cover 11 of the 12 months of the POR. Moreover, petitioners contend that the Department's use of WPI inflator/deflator methodology permits any factor surrogate value taken from a period before or after the POR to reflect the general macroeconomic circumstances of the Indian economy and food industry as a whole during the POR. *See* Petitioners' Rebuttal Brief at 25-26.

In sum, petitioners assert that the Department properly determined that the EDA data were more specific and reliable than the Nosedive article data, and that nothing presented by Anhui Honghui undermines that determination. As such, petitioners claim, the EDA data represent the best available information as to prices for honey in India, once adjusted with the WPI for contemporaneity. According to petitioners, the Nosedive article is less specific, detailed and reliable, and has no information about the source of the data. Petitioners state the Department has properly considered the honey price decline during the POR and adjusted the EDA data for that price decline using the Nosedive article. Petitioners state the Department's methodology is consistent with prior reviews. Lastly, petitioners contend that no adjustment to the WPI inflator is proper for the final results, and if any adjustment is to be made, it should be limited to correcting the deflator to reflect changes in prices only in the Bihar region.

#### **Department's Position:**

We continue to find that the EDA data placed on the record by petitioners constitute the best available information on which to base the surrogate value of raw honey for this POR. Accordingly, we find that an average of the prices contained in the EDA data, inflated to the current POR using WPI and deflated using the values in the Nosedive article, are the most reflective of raw honey prices in India during the POR. We explain these findings below.

In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) (*Garlic NSR 2002*), and accompanying Issues and Decision Memorandum, at Comment 6. Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. *See Certain Preserved Mushrooms from China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) (*Mushrooms 2001*), and accompanying Issues and Decision Memorandum, at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. As further noted in the *Garlic NSR 2002*, at Comment 6, the Department prefers, whenever possible, to use countrywide data, and only

resorts to company-specific (or regional) information when countrywide data are not available. In addition, the Department prefers to rely on publicly available data. *See Freshwater Crawfish Tail Meat from the PRC: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001) (*Crawfish 2001*), and accompanying Issues and Decision Memorandum, at Comment 2.

In the *Preliminary Results*, in accordance with its established practice and consistent with previous segments of this honey proceeding,<sup>7</sup> the Department determined that the EDA data constituted the best available information for purposes of valuing raw honey. In selecting the EDA data, the Department finds that these raw honey prices are the best information currently available because they are publicly available, quality data, and specific to the raw honey beekeeping industry in India. While not the most contemporaneous data to the POR, the Department has determined that the EDA data are the “best available information” for this POR because they are more detailed, product specific, and more reliable than the alternate data submitted by petitioners and respondents. As the U.S. Court of International Trade (CIT) recently held in *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, 366 F.Supp.2d 1264, 1275 (CIT 2005) (*Hebei Metals*), “{t}hree months of contemporaneity is not a compelling factor where the alternative data are only a year-and-a-half distant from the POI.” We note that the EDA data are from a published, publicly available source, the website [www.litchihoney.com](http://www.litchihoney.com).<sup>8</sup> With respect to quality, we find that the EDA data source is highly documented, including numerous specific price points over a six-year period for multiple types of honey from many suppliers, and includes detailed information on production, inputs, and beekeepers. Regarding specificity, we note, as determined in the *Preliminary Results* of this review, that the prices quoted in the EDA data continue to be specific to the raw honey beekeeping industry in the state of Bihar in India, which the Department found to be a significant producer of honey in India. *See Factors of Production Valuation Memorandum for the Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review and Eighth New Shipper Review of Honey from the People’s Republic of China* at 3-5, dated December 21, 2006, (*Prelim FOP Memo*). Regarding reliability, the Department finds that the data collection methods for the EDA data are documented with respect to data sources, distribution, and collection practice. *See id.*

With respect to respondent’s argument that the EDA data are not the best available information because they are not contemporaneous to the POR, and less contemporaneous than the Nosedive article, we note that the Department’s decision as to which information constitutes the “best

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<sup>7</sup>See *ADR3 Final Results* at Comment 1.

<sup>8</sup> See Petitioners’ Surrogate Value Submission, dated September 22, 2006, at Exhibit 3; and, Memorandum to the File from Patrick Edwards, Case Analyst, re: Transfer of Surrogate Value Source Documentation to the Record of the fourth Administrative Review of Honey from the PRC, dated December 6, 2006.

available information” is case specific and turns on the facts of each case.<sup>9</sup> The Department may not always be able to find surrogate values that satisfy each of the preferences listed above. Nevertheless, it is the Department’s practice to choose among the available surrogate value options and select that option which is the best. *See Crawfish 2001*, at Comment 2. In this review, respondents claim that the inflated EDA data value is aberrational, while petitioners argue that the EDA price data are reasonable. Given the diverging sets of data, the Department finds that it is faced in this review, as in previous reviews, with a set of information on the record that includes various price points within the POR, and that it is faced with determining the best available option. For the reasons stated previously, we determine that the EDA data constitutes the best available information from which to calculate the raw honey surrogate values. Finally, we disagree with Anhui Honghui’s contention that the CIT’s decision in *Zhejiang 1* somehow precludes the Department from using the current methodology to calculate the raw honey surrogate value. In *Zhejiang 1*, the Court remanded the methodology to explain how the data used, and normal values calculated, related to import values from other countries during the POI. The Court did not invalidate *per se* the Department’s methodology. Further, Commerce’s methodology for calculating the raw honey surrogate value was upheld by *Zhejiang Native Produce & Animal By-Products Import & Export Corp. V. United States*, 2004 Ct. Intl. Trade LEXIS 108; SLIP OP. 2004-109 (August 26, 2004) (*rev’d on other grounds*) 432 F.3d 1363, 2005 U.S. App. LEXIS 28062 (Fed. Cir., 2005). Thus, *Zhejiang 1* does not call into question the Department’s reliance upon the EDA data in calculating the raw honey surrogate value, nor the underlying methodology itself.

Regarding the honey prices from the India Infodrive and WTA data, we agree with petitioners that export data may not accurately reflect the market value of the goods within the country of exportation. As such, the data cannot be used as a benchmark. The Department’s stated preference is not to use export data. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum, at Comment 4; *see also Sebacic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 75303 (December 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 4. Furthermore, the Infodrive and WTA data rely on values “under HTS subheading 04900000,”<sup>10</sup> which is a basket category composed of both raw and processed honey shipments. The Department does not use data based on this subheading to value raw honey precisely because it is a basket category. The Department has also indicated in prior cases that it prefers not to use Infodrive or WTA data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because they do not account for all of the imports that fall under a particular HTS subheading.

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<sup>9</sup> Although we have determined in prior segments of this proceeding that prices in a single region of India are less representative than country-wide prices (*see Final Determination of Sales at Less Than Fair Value: Honey from the PRC*, 66 FR 50608 (October 4, 2001) (*Honey Final Determination*), and accompanying Issues and Decision Memorandum, at Comment 4), we note that the Department makes an independent determination of what constitutes the “best available information” during each segment of a proceeding based on the information available on the record.

<sup>10</sup> *See* Respondent’s Brief at 10, where respondent stated it used this category to derive the quoted prices.

*See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issue and Decision Memorandum, at Comment 1. Moreover, the Department does not find it necessary to use a benchmark for comparison purposes in this case, because the EDA data have already been proven to be reliable to value raw honey. In addition, Infodrive and WTA data do not serve as reliable benchmarks because the data are overly broad.

In light of the various price points reflected in the Nosedive article, the Department cannot agree with respondent that record evidence makes it self-evident that the Nosedive article represents actual Indian honey market prices. Rather, it demonstrates that the Indian honey market prices declined during the POR. The Department finds that the record shows that the EDA data are the most reliable because the collection methods of the data are clearly explained, and the sources of the data are identifiable. This stands in stark contrast to the Nosedive article, which fails to demonstrate how the prices were collected and does not identify its sources. The Department continues to find that it is appropriate to inflate the EDA data to be contemporaneous to the current POR according to the WPI. Although respondent raised concerns about the representativeness of the EDA data, the Department finds that the prices quoted in the EDA data are clearly from the second-largest honey-producing region in India, and are therefore representative of raw honey prices in India. *See ADR 3* at Comment 1. The Department finds that the raw honey surrogate value based upon EDA data, inflated with the WPI, and deflated according to the Nosedive article is the best available option for determining a raw honey surrogate value because it allows us to use the most reliable data (*i.e.*, EDA data) we have available.

With regard to petitioners' argument that the honey price deflation should be limited solely to the Bihar region because EDA data are based from the Bihar region, it is the Department's view that the Nosedive article reflects a decline in honey prices throughout India during part of the POR. Based upon the Nosedive article, we have no reason to believe that the decline in honey prices was specific to a specific region, but rather that the decline was attributed to the fluctuation of prices at which intermediaries were willing to buy honey, which would affect prices throughout the country.

We disagree with petitioners' claim that the Nosedive article is somehow less reliable as an indicator of the decrease in Indian raw honey prices than other sources cited by interested parties, when the Nosedive article at the very least provides several specific price points over the course of several years. We also find that the Nosedive article provides more reliability in that it identifies the regions of India from which the prices were sourced. Moreover, contrary to petitioners' assertions, the Nosedive article does not cite the surge in PRC honey imports as the cause for the price decreases in India. Rather, it indicates that "the supply has far exceeded the demand in absence of a proper pricing formula and unorganized retailing." *See* Attachment 2 of the Department's Preliminary Factor Valuation Memo. Accordingly, we have no basis to conclude that our deflation methodology needs to be further adjusted to exclude the "massive PRC imports" in this case. Just as the Department has determined that the EDA data, along with the WPI inflator, accurately reflect honey prices throughout India, it is also the Department's

determination that the Nosedive article indicates there was a drop in Indian honey prices during the POR. It is the Department's position that although the EDA data are specific to the Bihar region, they were also reflective of Indian honey values throughout the country, because Bihar is the second largest honey producing region in India. See *Prelim FOP Memo* at 3-5. In addition, the Department determines that it is appropriate to adjust raw honey prices using a deflator such as the Nosedive article, and to continue to apply a deflator that is representative of all regions listed in the Nosedive article. This is consistent with the most recently completed segment of this order and our Preliminary Results for this review. See *NSR7*.<sup>11</sup> Therefore, for the purposes of these final results, we continue to find that the EDA data are the best qualified, and are the most specific and documented surrogate source of raw honey prices in India. Furthermore, when these data are inflated by WPI and deflated by record evidence of declining prices, are reflective of market conditions in India during the POR.

The Department has evaluated the other potential sources for valuing raw honey placed on the record of this proceeding, such as WTA, Infodrive, and numerous articles placed on the record by respondent in this proceeding and in *ADR3* and *ADR2*<sup>12</sup> and continues to find them lacking in credibility. See Respondent's Brief at 20. None of these other potential sources is as reliable or appropriate for surrogate value purposes as the raw honey values appearing in the EDA data because they lack information regarding collection methods, identity of sources, and identity of geography. The data collection methods for the EDA data are documented as to sources, collection methodology, and geography.

In conclusion, the various price points on the record, with the exception of the EDA data, are generally of uncertain quality as to how the data were gathered, unclear in certain instances whether they referred to raw or processed honey, and if the data were reflective of market values in countries other than India (such as the export data from India to other countries). Given the varying degrees of data reliability, the Department placed a primacy on specific-to-the-product information that is reasonably contemporary to the POR in time, and based on the most transparent and reliable data gathering and reporting methods. Therefore, for these final results, we find that the EDA data continue to be the best available information for basing the value of raw honey, along with adjusting the EDA data with a WPI inflator to make it contemporaneous with the instant POR. In addition, we continue to find that the Nosedive article is a reliable source demonstrating a decline in Indian honey prices during the POR, and will continue to apply a decline according to the Nosedive article. Although we cannot agree with respondent that the Nosedive article is indicative of actual specific honey prices throughout India, we acknowledge, based upon the article, that a decline in honey prices occurred during the POR and that our deflation methodology applied based upon the Nosedive article is appropriate. The application of an inflator/deflator is consistent with past proceedings under this order.

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<sup>11</sup> See *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) (*NSR7*).

<sup>12</sup> See *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 38872 (July 6, 2005).

## **Comment 2: The use of Mahabaleshwar Honey Producers' Cooperative Financial Statements**

Anhui Honghui argues the Department should no longer rely on the MHPC financial statement, but rather use the Apis financial statement which it submitted earlier in the proceeding. According to Anhui Honghui, use of the MHPC statements yields “absurdly high ratios” when compared to those based on the Apis data. *See* Respondent’s Brief at 25. Anhui Honghui suggests such anomalies can be avoided through use of the Apis financial data. Respondent maintains the Department’s use of MHPC data are unsupported by substantial evidence, contrary to Departmental and judicial precedent, and is “internally inconsistent.” *See id.*

Anhui Honghui rejects the Department’s findings in this review (as in previous segments) that the Apis financial statement is unreliable because it does not include such standard sections as a chairman/president’s report or auditor’s notes. Claiming the absence of these attributes is common for Indian companies, Anhui Honghui suggests their absence in Apis’ case in no way impeaches the reliability of the underlying data. *See* Respondent’s Brief at 25. Anhui Honghui notes the Department relied upon a similarly sparse financial statement in *Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People’s Republic of China*, 69 Fed. Reg. 67,313 (November 17, 2004) and the accompanying Issues and Decision Memorandum at Comment 3 (*Bedroom Furniture*). Anhui Honghui suggests that in *Bedroom Furniture*, the Department, over petitioners’ objections, relied upon a surrogate company’s three-page financial statement despite the absence of accompanying schedules, auditor’s opinion or directors’ statement. Anhui Honghui contrasts our acceptance of the unadorned financial statement in *Bedroom Furniture* to the Department’s rejection of a similar statement in this review, claiming the Apis statement is fully audited, is signed by the auditor at each page, and includes all relevant schedules, including those relating to raw materials consumption, profit, and administrative expenses. *See* Respondent’s Brief at 27.

Anhui Honghui likewise rejects the Department’s finding in the *ADR3 Final Results* that the Apis statements are in some manner incomplete, claiming there is not a “scintilla of record evidence” to support the existence of auditor’s notes or any other sections allegedly missing from the record. *See* Respondent’s Brief at 27. Anhui Honghui accuses the Department of “sheer speculation” in rejecting the Apis statement; such speculation, the company contends, “is not support for a finding.” *See id.* Anhui Honghui accuses the Department of “absurd” reasoning in *ADR3 Final Results* in suggesting that it “cannot ascertain whether the Apis statements contain a complete record of sub-schedules” because of the Apis statements’ lack of page numbering. *See id.*, quoting *ADR3 Final Results*, Issues and Decision Memorandum at 19. To the contrary, Anhui Honghui insists, the submitted financial statements’ schedules are numbered, and the statements themselves are complete. Anhui Honghui points to the auditor’s stamp and signature on each page as further supporting the credibility of the document. *See id.*

While acknowledging that the Court affirmed the Department’s use of MHPC financial statements in *Wuhan Bee Healthy Co., Ltd. v. United States*, 374 F. Supp. 2d 1299 (Ct. Int’l Trade 2005) (*Wuhan Bee*), respondent nonetheless distinguishes between that review and the

instant segment. In the proceeding at issue in *Wuhan Bee*, the company argues, the Department was forced to choose between the financial statements of two Indian *cooperatives*, “both of which included non-subject merchandise . . . among other deficiencies.” *See* Respondent’s Brief at 28. In this review, Anhui Honghui maintains, the Department is choosing between MHPC, “a minuscule honey cooperative,” and Apis, one of the largest Indian honey producers and exporters. Respondent further suggests that Apis’ financial statements “are not tainted by non-subject merchandise.” Anhui Honghui also claims further that the financial performance of MHPC, as a cooperative, is affected by “non-market forces” not applicable to Apis. *See Id.* at 28 and 29.

Turning to the MHPC financial statements, Anhui Honghui claims the MHPC data lack credible figures for raw materials and profit, rendering their use in this case “contrary to agency and Court precedent.” *See* Respondent’s Brief at 29. Anhui Honghui notes the Department’s practice in calculating financial ratios is to divide the surrogate’s SG&A expenses by its cost of manufacturing, comprising total raw material, labor and energy costs. *See id.*, citing *Notice of Final Results of Antidumping Duty Administrative Review: Persulfates from the People’s Republic of China*, 70 Fed. Reg. 6,836 (February 9, 2005). According to Anhui Honghui, the Department has in the past rejected surrogate financial data for such minor discrepancies as the inclusion of packing material costs. *See id.*, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People’s Republic of China*, 63 Fed. Reg. 72,225 (December 31, 1998) (*Mushrooms*). Anhui Honghui suggests the flaws in MHPC data run much deeper. *See id.* Respondent claims the MHPC financials do not list a closing stock value for the cooperative’s raw materials; without this figure, Anhui Honghui insists, it is impossible to calculate accurately MHPC’s raw materials consumption “without resorting to unlawful speculation as to MHPC’s inventory valuation method.” *See id.* at 30. Therefore, Anhui Honghui avers, the MHPC financial data are not only tainted, but their use requires the Department to operate in a void, absent a reliable method to value raw materials. Anhui Honghui contrasts this perceived deficiency in the MHPC financials with the Apis data, which include the closing stock value for raw materials. Further, Anhui Honghui suggests that the Department’s “tortured methodology” of using the MHPC financials has only been applied in the investigations and reviews of honey, whereas, according to Anhui Honghui, the Department in other NME proceedings has based its financial ratios on actual raw material and profit figures. *See id.*

According to Anhui Honghui section 773(f)(1) of the Act requires the Department to “rely on costs which ‘are kept in accordance with the generally accepted accounting principles of the exporting country . . . and reasonably reflect the costs associated with the production and sale of the merchandise.’” *See id.*, quoting the Act. Anhui Honghui suggests MHPC’s financial statements fail on both counts, leading to costs which “cannot possibly ‘reasonably reflect’ the cost to sell honey in India. *See id.* at 31. Anhui Honghui rejects the Department’s claim in *ADR3 Final Results* that the need to make certain assumptions in calculating the raw material costs and profit from MHPC’s data does not, in turn, “make the data unusable.” *See id.* at 30, citing *ADR3 Final Results*. Such unsupported assumptions, Anhui Honghui insists, “conflict with the plain language of the statute.” *See id.* at 31.

Anhui Honghui also elaborates on its claim that MHPC's financial statements are distorted by non-market factors. According to respondent, the Department is required to avoid surrogate values tainted by such non-market forces, citing *Nation Ford Chemical Co. v. United States*, 21 CIT 1371, 1374 (Ct. Int'l Trade 1997). Anhui Honghui accuses the Department of impermissibly using the MHPC data, despite such alleged non-market distortions as paying high prices for honey and making bad loans to cooperative members. Anhui Honghui disputes the Department's findings in *ADR3 Final Results* that MHPC's payment of "artificially inflated prices" for raw honey to its cooperative members, and its provision of loans to members that were subsequently unpaid did not constitute "unusual business practices." See Respondent's Brief at 32. According to Anhui Honghui, the unpaid loans "skew the ratios calculated by the Department" using MHPC's financial statements. See *id.* Furthermore, Anhui Honghui argues, the Department routinely disregards transactions between affiliated parties that are at different prices than those between unaffiliated companies. See *id.*, citing *Stainless Steel Wire Rod from the Republic of Korea*, 71 Fed. Reg. 59739, 59741 (October 11, 2006). Anhui Honghui suggests "it is reasonable to conclude" that the MHPC statements used in the instant review suffer from the same defects, especially given petitioners' "failure to provide an English translation of the entire document." See *id.* at 33.

Anhui Honghui also claims the MHPC statements do not comport with Indian Generally Accepted Accounting Principles (GAAP), thus rendering them unfit for use in this review. According to Anhui Honghui, Indian GAAP, in particular, Schedule VI of the Companies Act of 1956, requires Indian firms to state the value of raw materials consumed, the value of opening and closing stocks of goods produced, and actual production. See Respondent's Brief at 34. According to Anhui Honghui, MHPC's financials provide none of these measures. Anhui Honghui claims that as a cooperative, MHPC is under no obligation to comply with Indian GAAP, as it is not a "company" as defined under Indian law. As a result, Anhui Honghui contends, MHPC auditors will not address these "deficiencies." The Department should, Anhui Honghui insists, reject MHPC's financials in favor of statements that are fully compliant with Indian GAAP. See *id.*

Respondent also claims the MHPC statements are distorted through their inclusion of non-subject merchandise. Anhui Honghui avers that the MHPC financials include the results of the cooperative's fruit canning operations; any ratios based on these statements, Anhui Honghui maintains, are accordingly skewed. This "tainting" of MHPC's financial results, Anhui Honghui suggests, further militates for use of the Apis financials, which reflect only the results of Apis's honey business. See Respondent's Brief at 35.

Anhui Honghui also notes petitioners failed to provide fully-translated versions of the MHPC financial statements, as required by 19 CFR 351.303(e). According to respondent, petitioners submitted only a two-page English summary of the 2004-2005 financial statements, which ran over twenty pages in length, without the Department's approval. Anhui Honghui cites *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products from Venezuela*, 67 Fed. Reg. 31273 (May 9, 2002) (*Venezuela Cold-Rolled Steel*) where the Department rejected as

insufficient a company's filing of a one-page English translation for a fifty page Spanish language document. As in that case, Anhui Honghui insists, the MHPC financials are "severely deficient" and should be rejected by the Department. *See* Respondent's Brief at 36.

Finally, Anhui Honghui characterizes the Department's selection of the MHPC financials over the Apis statements as "internally inconsistent and, therefore, contrary to law." *See id.* Recounting the alleged deficiencies in the MHPC statements (see above), Anhui Honghui argues "[t]he Department cannot reject the Apis financial statement because it is allegedly incomplete, and then turn around and use another financial statement, which . . . provided even less information than the statement it rejected." *See id.* at 36, citing *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States*, 318 F. Supp. 2d 1339, 1351-1352 (Ct. Int'l Trade 2004). Anhui Honghui maintains the Apis statements (i) reflect only honey operations; (ii) are fully GAAP-compliant; (iii) are not distorted by "non-market factors;" and (iv) better represent the performance of Anhui Honghui, given the similarities in Apis' and respondent's honey distribution operations. *See id.* at 37.

In rebuttal, petitioners contend the Department should continue using the MHPC data, given their "superiority." *See* Petitioners' Rebuttal Brief at 27. Petitioners aver that none of the arguments adduced by Anhui Honghui invalidates the Department's "preference in using the MHPC data over the Apis data in calculation of surrogate financial values for this or other honey reviews." *See id.* Petitioners reject as inapposite Anhui Honghui's citation to *Bedroom Furniture*, suggesting the only lesson to be drawn from that case is that despite their incompleteness, the financial statements used were nonetheless more reliable than any other available sources on the record. Petitioners cite with approval the Department's conclusion in *ADR3 Final Results* that the lack of details in the Apis financials, while not discrediting them outright, "render the Apis financial statements comparably less reliable than MHPC's financial statements." *See id.* at 28, quoting *ADR3 Final Results* Issues and Decision Memorandum at Comment 2. Petitioners note the Department considered all of the putative shortcomings in the MHPC data in *ADR3 Final Results*, and found them "superior to the Apis data." *See id.* at 29. According to petitioners, the MHPC data are "more contemporaneous, and more detailed" than the Apis data, and are also "more product- and production-specific than their Apis counterpart." *See id.*

Petitioners dispute Anhui Honghui's characterization as "absurd" the Department's finding that the Apis statements are incomplete and missing the relevant auditor's notes. If no such auditor's report existed, petitioners aver, "Apis would not and could not be a public company" in India. *See* Petitioners' Rebuttal Brief at 30. A normal annual report for an Indian company, petitioners assert, would include sub-schedules and notes, and managerial reports to shareholders; in the absence of pagination of the Apis document, petitioners argue, it is impossible for the Department to even estimate the size of the submitted *versus* un-submitted portions of this statement. *See id.* Accepting, *arguendo*, that the Apis financial statement is complete and has no further schedules or reports, petitioners argue this is evidence that Apis is not a public company. If Apis is not a public company, petitioners continue, then its financial statements are not publicly available information and cannot be used in determining surrogate values. *See id.*

Petitioners also dismiss Anhui Honghui's suggestion that the Department failed to compare properly the competing financial statements at issue in this review. To the contrary, petitioners insist any comparison of the two documents "demonstrates that the Apis data provide a less reliable source of financial information," and that the Department properly selected the MHPC financials.

Petitioners take issue with Anhui Honghui's characterization of *Mushrooms*; according to petitioners, the defective raw materials costs in that proceeding were not a matter of little import, but rather, the inclusion of packing materials nearly doubled the reported costs. *See* Petitioners' Rebuttal Brief at 31. Further, petitioners note, the Department considered and rejected this identical claim regarding MHPC's raw material costs in the *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38872 (July 2, 2005) (*ADR2*) Final Results Issues and Decision Memorandum at 18. Petitioners suggest that, just as in prior segments of this proceeding, the MHPC statements "contain sufficient data to calculate reasonable financial ratios." *See id.* Quoting approvingly the Issues and Decision Memorandum from *ADR3 Final Results*, petitioners insist the MHPC data "are sufficiently accurate to allow for methodologically sound allocations based on reasonable interpretations regarding raw material consumption." *See id.* at 32.

Petitioners question respondent's claim that "non-market factors," including MHPC's status as a cooperative, render unusable its financial data. According to petitioners, the Department has previously considered and rejected this identical claim. Petitioners suggest the Department's conclusion from *ADR2 Final Results*, that "respondents have not cited evidence that supports their claim that MHPC's results are distorted by non-market forces" "should be retained." *See id.*, quoting *ADR2 Final Results* Issues and Decision Memorandum at Comment 2. Similarly, petitioners reject as "without merit" Anhui Honghui's suggestion that MHPC's honey purchases were at "artificially inflated prices," and that its loans to members "distort the cooperative's financial results." *See id.* As to the first point, petitioners accuse Anhui Honghui of providing no proof that MHPC's purchase prices were, in fact, artificially high. As to the second point, petitioners aver, any missing bad debt from member loans would serve to understate, not overstate, MHPC's SG&A expenses, which would be "a conservative measure of operating costs." *See id.* at 33. Finally, petitioners argue the Department disposed of this matter in *ADR3 Final Results*, citing the accompanying Issues and Decision Memorandum at Comment 2.

As to GAAP, petitioners argue there is no record evidence that MHPC's financial statements do not comport fully with applicable Indian GAAP. Anhui Honghui's contentions, petitioners suggest, are contrary to the Department's previous findings that MHPC "does function according to market forces" and can thus serve as a source of valid data for calculating surrogate financial ratios. Petitioners distinguish the instant case from previous decisions by the Department to reject information as failing to comply with local GAAP. Such rejections, petitioners claim, were always occasioned by an auditor's report specifying that the company's reporting methodology was inconsistent with GAAP. *See* Petitioners' Rebuttal Brief at 34. Petitioners contrast that scenario with the instant review which contains no such indications the MHPC financials are not GAAP-consistent. Furthermore, petitioners continue, given the complete

absence of any auditor's notes in the competing Apis document, it "does not offer a valid alternative in this respect." *See id.* Petitioners insist that, as in prior segments of this proceeding, the Department should continue to rely on the MHPC statements.

Petitioners also disagree that the inclusion of the results of MHPC's fruit canning operations renders the cooperative's financials unsuitable for use in this review. Noting Anhui Honghui's claim that the fruit canning results create "ambiguity and inaccuracy" in the resulting financial ratios, petitioners submit the Department has already rejected this argument in two prior reviews, *ADR2 Final Results* and *ADR3 Final Results*. *See* Petitioners' Rebuttal Brief at 34 through 36, quoting *ADR2 Final Results* Issues and Decision Memorandum at Comment 2, and *ADR3 Final Results* Issues and Decision Memorandum at Comment 2. In both determinations, petitioners argue, the Department cited the relatively small percentage of MHPC's overall operations accounted for by the fruit canning operations as mitigating these operations' impact on its overall financial ratios. *See id.*

Turning to the alleged lack of translations, petitioners first argue that the "necessary elements" of the MHPC financials are translated. This, petitioners maintain, satisfies the requirements of 19 CFR 351.303(e) that "only pertinent portions, where appropriate" of a document need be translated for the record. *See* Petitioners' Rebuttal Brief at 36, quoting 19 CFR 351.303(e). According to petitioners, the Department's practice has been to accept partial translations as long as the translation covers "the pertinent portions" and "accurately reflects the essential information presented in the document." *See id.* Petitioners distinguish the instant case from *Venezuela Cold-Rolled Steel*, claiming its translations are, in fact, "sufficient" for the Department's needs; this sufficiency is manifest, petitioners assert, in the Department's use of MHPC's financials in the *Preliminary Results*. Petitioners also suggest the fully-translated 2004-2005 MHPC financial statements are already part of "the permanent record of the proceeding and available to the Department" if any issues arise, noting that Anhui Honghui itself provided a full translation for the record of the prior review. *See id.* at 37, citing *ADR3 Final Results*. Finally, as to translations, petitioners maintain Anhui Honghui has not even argued that the untranslated pages would have any effect on the Department's calculations in the instant review. Absent such argument, petitioners aver, the Department should reject Anhui Honghui's assertions. *See id.*

Petitioners also insist there is nothing "internally inconsistent" in the use of MHPC's financial data in this review. Petitioners suggest that, just as no single issue raised by Anhui Honghui merits rejection of the MHPC data, neither do these issues when considered in their totality. Petitioners contend the Department has already addressed all of the alleged shortcomings of the MHPC financials in *ADR3 Final Results*. The Department nevertheless determined to accept the MHPC data. According to petitioners, Anhui Honghui has adduced no new information in this review to challenge that previous determination.

#### **Department's Position:**

Pursuant to section 773(c)(1) of the Act, it is the Department's practice to use the best available information for valuing the financial ratios. In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In evaluating the veracity and suitability of surrogate financial statements, the Department attempts to find the most representative and least distortive market based value in the surrogate country, and considers several factors, including the quality, specificity, and contemporaneity of the source information. *See, e.g. Garlic NSR 2002*, at Comment 6. For the reasons discussed below, the Department finds the 2004 - 2005 MHPC financial statements to be the best and most contemporaneous available information for valuing the financial ratios.

In the *Preliminary Results*, the Department relied on the 2004-2005 MHPC financial statements. As an initial matter, the Department continues to find that the Apis financial statements are not as reliable a source for calculating the surrogate financial ratios as the MHPC data. It is unclear to the Department the extent to which the Apis financial statements submitted are complete. For example, they do not include standard sections such as auditors' notes or footnotes. More importantly, because the Apis financial statements do not include page numbers, the Department cannot ascertain whether the Apis statements contain a complete record of sub-schedules. Despite being forewarned by our similar conclusion in *ADR3 Final Results*, Anhui Honghui in this review has provided no further evidence to demonstrate that the Apis statements are, in fact, complete. While the missing sections themselves do not discredit completely the probity of the Apis financial statements in their totality, the Department finds the lack of details commonly found in corporate financial statements renders the Apis financial statements comparably less reliable than MHPC's financial statements, which include such information. While the MHPC financial statements specifically report itemized costs associated with honey production and sales, and specifically segregate honey production and sales from MHPC's other business functions, the lack of detail in the Apis financial statements leaves the Department unable to ascertain the extent of the company's honey and non-honey business functions. In the context of antidumping duty reviews for honey from the PRC, it has been the Department's practice to rely on financial statements which include auditors' notes. The missing page numbers from the Apis financial statement cause an uncertainty as to whether we have the complete financial statement. The Department has determined that the relevant parts of the MHPC financial statement are complete as the page numbers provide confirmation that a complete financial statement has been provided as requested during the proceeding. *See* Department's Sections A-E Questionnaire to Anhui Honghui dated February 28, 2006, at A-7. In addition, the Department has determined that all relevant parts of the MHPC financial statements have been properly translated, and there are no untranslated sections that are required to derive financial ratios.

The Department also disagrees with Anhui Honghui's assertion that the MHPC data are deficient and that the Department made erroneous assumptions regarding MHPC's accounting practices. The Department finds that the MHPC financial statements provide adequate information to approximate the cost of goods sold, based on the reported amounts of "honey collected" and "honey sold." *See* MHPC's 2004-2005 financial statements at 7. Contrary to Anhui Honghui's

assertions, the necessity of making certain assumptions in ascertaining the cost of raw honey consumed and the subsequent profit calculation do not make the data unusable. Consistent with section 773(f)(1)(A) of the Act, the Department may allocate costs and make adjustments where the reported costs do not reasonably reflect the costs associated with the subject merchandise. Thus, the Department finds that the current calculation methodology provides for a reasonable derivation of the cost of goods sold and profit ratio. The Department also disagrees with Anhui Honghui's assertion that MHPC does not represent a free market entity. Consistent with determinations in previous segments of this proceeding, the Department finds that delinquent loans from members and higher prices paid to affiliated producers are not unusual business practices, and do not discredit MHPC as a free-market entity. *See ADR2 Final Results at Comment 2.* Because MHPC buys raw honey from its affiliated producers and sells processed honey to unaffiliated customers, the Department finds the MHPC financial statements are reflective of the experience of Indian honey producers.

The Department also disagrees with the Anhui Honghui's contention that the Department should reject the MHPC financial statements because they do not comport with Indian GAAP. In previous reviews, the Department has rejected financial statements that were not in accordance with the surrogate country's GAAP; however, in such reviews, the Department's decision was based on auditor's notes included in the financial statements, which stated that the company's reporting methodology was inconsistent with GAAP. *See, e.g., Tapered Roller Bearings and Parts thereof, Finished and Unfinished from the People's Republic of China; Final Results of 1997 - 1998 Antidumping Duty Administrative Review and New Shipper Review*, 64 FR 61837 (November 15, 1999) and accompanying Issues and Decision Memorandum at Comment 8. In the instant review, MHPC's auditor's notes provide no such indication. Furthermore, the Apis financial statements lack auditor's notes altogether. Thus, the Department finds that Anhui Honghui's claim that the Apis financial statements comport with Indian GAAP, while MHPC's do not, is based on Anhui Honghui's unsupported assertion, rather than an auditor's official certification, and we therefore accord it little weight, especially given the Court's acceptance of the Department's reliance on MHPC in prior reviews. *See Wuhan Bee*, 374 F. Supp. 2d at 1309. Additionally, while the Department does consider whether the surrogate financial statements conform to the GAAP of the surrogate country, the Department also carefully considers all of the available evidence in light of the particular facts of each industry and undertakes the analysis on a case-by-case basis.

The Department also disagrees with Anhui Honghui's assertion that MHPC's fruit canning business "skews" the resulting financial ratios. Consistent with the decision in the *ADR2 Final Results at Comment 3 and ADR3 Final Results at Comment 2*, the Department finds that the asset value of non-subject operations accounts for only a minor portion of MHPC's total asset value. In addition, we continue to find that the MHPC materials include a complete annual report, an auditors report, and complete profit and loss and business statements that segregate MHPC's honey and fruit canning business, therefore, making it possible to exclude fruit canning operations out of the equation for calculating a raw honey surrogate value.

In light of the above, the Department continues to find that MHPC's financial statement is

superior to Apis' and will continue to rely on it for purposes of calculating the surrogate financial ratios in these final results.

### **Comment 3: Calculation of Financial Ratios**

Respondent Anhui Honghui argues that the Department's use of the MHPC financial statements is unlawful. However, should the Department continue to use the MHPC financial statements, respondent argues, that the Department should make certain amendments to its calculation of the financial ratios. The four adjustments are discussed below.

#### **Inventory Valuation**

First, respondent argues that the Department should employ the "first in, first out" (FIFO) accounting method to derive raw honey costs, rather than a "last in, first out" (LIFO) accounting methodology. Respondent asserts that the Department's application of LIFO, which is based on the assumption that MHPC had no ending inventory, is illegal. Respondent argues that the Department's rejection of a similar argument in POR 3 on the basis that respondents did not provide evidence to support the claim that honey is perishable "misses the point." The point, according to respondent, is that the use of a LIFO methodology is illegal because it is speculative and leads to "absurdly" high financial ratios. In addition, respondent states that a LIFO methodology "does not make sense in the case of an input such as honey, where there would be an incentive to use the oldest raw material first." Respondent states that the Department should "calculate ratios based on logical assumptions supported by record evidence" and value inventory on a FIFO basis. *See* Respondent's Brief at 38-39.

In their rebuttal brief, petitioners state that "respondent has never submitted any proof that honey is a perishable product" and that respondent has not substantiated the basis for arguing the usage of a FIFO methodology. Petitioners note that the Department rejected this argument in two prior segments of this proceeding. Additionally, petitioners state that respondent "misses the point" that there must be a specific and objective reason provided to support the contention that a FIFO methodology is superior to a LIFO methodology in this case. Absent the argument regarding the perishability of honey, petitioners assert that respondent has provided no such reason. Therefore, petitioners assert that the Department should reject respondent's arguments with respect to this issue. *See* Petitioners' Rebuttal Brief at 39-40.

#### **Honey Sales Commissions**

Respondent Anhui Honghui also argues that the Department should exclude "Honey Sales Commissions" from the MHPC calculation of surrogate financial ratios. Respondent states that it does not incur a sales commission on sales of subject merchandise. Therefore, according to respondent, the MHPC financial expense should be adjusted to exclude the cost of commissions. Respondent notes that in POR 3, the Department stated that it does not modify surrogate financial ratios to match the circumstances of an NME country, but then asserts that the Department nevertheless adjusted the MHPC ratios in the preliminary determination of this

review. Citing to *Sinopec Sichuan Vinylon Works v. United States*, Slip Op. 06-78 (May 25, 2006) (“Sinopec”) at page 12, respondent asserts that the Court “rejected Commerce’s decision not to make certain adjustments to account for manufacturing differences between the surrogate company and the Chinese products, while at the same time Commerce made other adjustments that increased normal value.” Respondent argues that the Department’s adjustment of the MHPC expense in the preliminary determination is analogous to the fact pattern in *Sinopec*, and therefore is inconsistent, unfair, and arbitrary. Therefore, according to respondent, the Department should adjust the financial expense to eliminate honey sales commissions. *See* Respondent’s Brief at 39-41.

Petitioners state that it is standard practice to exclude many elements in SG&A when calculating the financial expense ratio in order to prevent double-counting. Petitioners state that commissions are not universally deducted from U.S. price, but instead are subject to circumstance-of-sale adjustments. Since the Department’s normal practice is to deduct expenses in the foreign market where it deducts the same expenses from U.S. price, and since normal value is not based on the particular circumstances in an NME market, there is no reason to deduct commissions, and thus no reason to change the surrogate financial ratio. Petitioners also state that the Department made the same findings in POR3, and that the Department’s practices in this issue should be given deference as the expert agency. *See* Petitioners’ Rebuttal Brief at 41-43.

#### Jars and Corks

Anhui Honghui argues that the Department should include the cost of jars and corks in the denominator of the financial ratio calculation. Respondent states that the record demonstrates that MHPC purchased different size jars in 2003-2004 and 2004-2005, are thus direct materials, and should be treated as such. Respondent contends that the Department’s finding that jars and corks are listed separately from honey sales has no bearing on whether they should be included in the denominator of the expense. Rather, contends respondent, the issue is whether MHPC sells its processed honey in jars. Respondent notes that MHPC lists the expenses for jars and corks along with other honey-related expenses, and that it does not use them in the fruit canning division. Therefore, according to respondent, “the only reasonable explanation is that MHPC sells its honey in jars and corks” and that the expenses should be treated as direct raw materials. Respondent further states that the denominator of the financial expense ratio should include all direct material costs, and argue that the inclusion of such expenses would also result in a more accurate profit calculation. Finally, respondent states that even if the Department continues to exclude the jars and corks purchases from the financial expense ratio denominator, the Department nevertheless should deduct the amounts from net revenue. *See* Respondent’s Brief at 41-43.

Petitioners stated that respondent’s contentions are incorrect, and that the expenses associated with jars and corks purchases should neither be included in the denominator calculation nor deducted from the cost of net revenue. Petitioners cite to the Department’s decisions in POR2 and POR3, where the Department found that respondent did not submit evidence to show that

such raw materials were used in the production of honey. Petitioners state that jars and corks are listed separately from honey sales and packaging costs on MHPC's financial statements, indicating it is proper to exclude them from the financial expense ratio calculation. Petitioners note that the sales figures in each fiscal year for jars, corks and other items such as bee boxes are separate, and states that the data indicate that MHPC purchases, stocks, and resells honey-related items to others. Therefore, petitioners argue, the Department should continue its previous practice with respect to the treatment of jars and corks. *See* Petitioners' Rebuttal Brief at 43-44.

## Labor Expenses

Anhui Honghui asserts that the Department's treatment of certain labor-related expenses as factory overhead, instead of direct labor, is incorrect. Respondent argues that, until recently, the Department treated such costs as materials, labor and energy (MLE) costs. Respondent contends that the Department's failure to include these labor-related costs in MLE costs is unlawful. Noting that the Department uses tables published in Chapter 5B of the *Yearbook of Labour Statistics* by the International Labour Office to determine labor costs, respondents state that the Court of International Trade has found that data in Chapter 5 is inclusive of the above-mentioned labor costs. Citing to *Luyang Bearing Corp. v. United States*, 347 F. Sup. 2d 1326, 1334 (May 18, 2004) ("Luyang"), respondent states that where PRC firms incur additional labor expenses not captured by the financial expense ratios, it is proper to include them in SG&A. Respondent asserts, in contrast, that the record of this proceeding contains no evidence that respondent incurred additional labor costs that would warrant their inclusion in SG&A. Therefore, respondent argues that the Department should treat the costs in question as direct labor costs included in MLE costs. *See* Respondent's Brief at 43-45.

Petitioners contend that the Department's treatment of these labor expenses as part of the factory overhead numerator, rather than in the MLE costs denominator, is proper. Petitioners state that the Department's treatment of these expenses is an attempt to emulate the conditions of a market economy in calculating surrogate values. Petitioners contend that, since the level of labor compensations might be distorted by non-market factors, the Department's methodology creates a normal value that emulates market conditions and is a more accurate reflection of labor-related expenses. Therefore, petitioners state that the Department should not change its current methodology. *See* Petitioners' Rebuttal Brief at 36-37.

## **Department's Position:**

### Inventory Valuation

As stated previously, pursuant to section 773(c)(1) of the Act, it is the Department's practice to use the best available information when calculating financial ratios. In calculating the financial ratios, the Department attempts to use a methodology that is the most representative and least distortive market based value in the surrogate country. We agree with petitioners that it is appropriate to use the LIFO accounting method because the type of honey taken out or left in inventory will not necessarily depend on when it entered inventory, but rather the type of honey

each customer specifically orders with respect to honey type, volume, and container type. With respect to the question of whether honey is a perishable product, respondent has provided no evidence to support its claim that honey is perishable. Accordingly, we do not find any reason to determine that honey is a perishable product. Without an adequate argument that honey is perishable, we find no reason to deviate from our prior findings that it is most appropriate to use a LIFO methodology. Furthermore, we agree with petitioners that respondent has not shown any evidence, or provided further explanation, as to why a FIFO methodology should be used instead of a LIFO methodology. In addition, there is no evidence on the record for the Department to determine that the LIFO methodology is distortive. Thus, the Department finds no reason to alter its inventory valuation methodology, which was applied in the *Preliminary Results* and previous segments of this order. Thus, consistent with the *Preliminary Results* and the *ADR2 Final Results*, at Comment 2 and *ADR3 Final Results*, the Department finds that the methodology used in the *Preliminary Results* to calculate the cost of goods sold is reasonable, and will continue to use this methodology for the final results.

### Honey Sales Commissions

With respect to the question of sales commissions, the Department also disagrees with respondent's argument that the Department should exclude honey sales commissions from the calculation of the surrogate financial ratios. Consistent with the Department's findings in the *ADR2 Final Results*, at Comment 3, *NSR4 Final Results*, at Comment 3, the *Tapered Roller Bearings 1998*, at Comment 1, and *ADR3 Final Results*, the Department has determined that because sales commissions represent standard selling expenses, these commissions should be included in the surrogate SG&A calculation. Whether a PRC producer incurred sales commissions is irrelevant to the Department's surrogate SG&A calculation, as the Department does not modify surrogate financial ratios to match the particular circumstances of the NME country. Furthermore, the modifications of the surrogate SG&A calculation listed by respondent are normal modifications performed by the Department, and do not indicate that the Department should further modify the expense ratio to exclude commissions.

### Jars and Corks

The Department disagrees with respondent's assertion that the Department should include the "jars and corks" expenses in the calculation of the surrogate financial ratios, premised upon the assumption that the "jars and corks" were consumed in the sale of honey. Respondent failed to provide evidence that the "jars and corks" were consumed as packing in the manner described. The Department notes that the costs and revenues associated with "jars and corks" are independently itemized on the MHPC financial statements, specifically apart from the lines items labeled "honey sales" and "packaging." Without supporting evidence to suggest that these items are associated with or incorporated into the sale of subject merchandise, the Department must treat the financial statement line items as they have been reported in the MHPC financial statement, independent of sales and packaging. Purchases of different sizes of jars and corks do not constitute evidence in support of respondent's contention, especially given the itemization of the "jars and corks" expenses on MHPC's financial statements. Thus, consistent with previous

segments of this order, the Department will continue to deduct only those packing expenses identified in the line item “packing” in the MHPC annual report, and will not adjust the surrogate financial statements to include the expenses for “jars and corks.” *See* Placement of Factor Values on the Record dated December 4, 2006 at Attachment 7.

## Labor Expenses

With respect to labor costs, we agree with petitioners. As we explained in *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum, at Comment 3, and *Tables and Chairs*, at Comment 1B, moving the relevant employee benefits from direct labor to manufacturing overhead is consistent with our regression-based PRC wage rate calculation. The Department based its calculation of the expected PRC wage rate on the ILO’s categorization of information provided by the countries it surveys. Information from the ILO website defines wages and labor costs separately.<sup>11</sup> Specifically, Chapter 5 defines “wages” as:

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay. *See id.*

Chapter 6, “Labour Costs,” are defined as including employee benefits:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost . . . . *See id.*

*See Persulfates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum, at Comment 3.

The wages category (Chapter 5) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. As we stated in *Expected Non-Market Economy Wages: Request from Comments on 2006*

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<sup>11</sup> *See* ILO Website: <http://laborsta.ilo.org/>.

*Calculation*, 72 FR 949 (January 9, 2007), the Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the *Yearbook of Labour Statistics*. In the instant administrative review, the MHPC surrogate financial data allow the Department to segregate labor expenses into “Wages” (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department’s expected NME wage rate), and the other labor costs (which are not included in the Department’s calculated NME wage rate). Accordingly, as consistent with the methodology employed in calculating the expected PRC wage rate, and as articulated in *Tables and Chairs*, at Comment 1B, and consistent with *ADR3 Final Results*, we have determined that it is appropriate to include these employee benefit categories in factory overhead in order to ensure that they are captured in our calculation of normal value, rather than in MLE as advocated by respondents.

#### **Comment 4: Brokerage and Handling Surrogate Value**

In the *Preliminary Results*, the Department used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported by Essar Steel Ltd. (Essar) and Pidilite Industries Ltd. (Pidilite).<sup>12</sup> See *Prelim FOP Value Memo* at 9 and 20. Respondent asserts that the Essar and Pidilite brokerage and handling figures are non-contemporaneous. Respondent asserts the brokerage and handling figures it submitted on the record, reported from respondents in on going antidumping duty proceedings, Navneet Publications (India) Ltd. (Navneet), Agro Dutch Industries Limited (Agro Dutch), and Kerjriwal Paper Ltd. (Kerjriwal), are more contemporaneous and overlap with the current POR. See Anhui Honghui’s Second Surrogate Value Submission (February 6, 2007), at Exhibit 14. Thus, respondent contends, the Department should use the more contemporaneous data from these three companies which were respondents in antidumping duty proceedings and discontinue the use of Essar and Pidilite in its brokerage and handling equation.

Respondent argues that the Department should follow precedent and disregard the non-contemporaneous data of Pidilite and Essar. See *Anshan Iron & Steel v. United States*, Slip Op. 03-83 at 33 (July 16, 2003) (rejecting an argument to include less contemporaneous surrogate values and stating, “{t}his court has repeatedly recognized that Commerce’s practice is to use surrogate prices from a period contemporaneous with the period of investigation.”). Respondent contends that the Pidilite brokerage and handling value is aberrational. Respondent supports its contention by stating that the Pidilite brokerage charge is derived from only 19 sales consisting of only 13 metric tons of merchandise in total. Respondent points out that the Department calculated a weighted average brokerage fee for these 13 metric tons of 6.48 Rs/kg. In contrast, respondent continues, the next closest brokerage and handling values, which is from Navneet, was derived from over 3,200 metric tons of shipments with a weight average brokerage fee of 0.21 Rs/kg. Thus, respondent states, the brokerage and handling reported by Pidilite is aberrational and cannot be used in the final results. Respondent asserts that the Department

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<sup>12</sup> Brokerage and handling figures were obtained from the U.S. sales listings in Essar Steel Ltd.’s February 28, 2005, submission in the antidumping duty review of Certain Hot-Rolled Carbon Steel Flat Products from India, and the March 9, 2004, submission from Pidilite Industries Ltd. in the antidumping duty investigation of Carbazole Violet Pigment 23 from India.

should use the three contemporaneous brokerage and handling values on the record, *i.e.*, Navneet, Kejrival, and Agro Dutch, which overlap with the POR.

Petitioners argue that the Pidilite data are not significantly outdated nor aberrational. Petitioners argue that contemporaneity is only one criterion the Department will explore in selecting surrogate values. According to petitioners, in past cases the Department has determined that specificity and/or representativeness are more critical than contemporaneity. Petitioners assert that the Courts have upheld the Department's right to judge differing factors when selecting surrogate values. *See Hangzhou Spring Washer Co., Ltd. v. United States*, Slip Op. 05-80 at 23-24 (July 6, 2005) ("since neither the statute nor the regulations speak to the issue of contemporaneity versus specificity, and case law had not delineated a bright line to rule on the matter, the Department has the statutory authority to give greater weight to one over the other").

Petitioners rebut the contention that Pidilite's data are aberrant because they represent an aggregate shipment volume of 13 metric tons. Petitioners argue that the small aggregate shipment volumes take into consideration smaller honey exporters, and selecting values across the range of economies of scale should supersede contemporaneity. Petitioners conclude that the Department should value brokerage and handling by averaging the Pidilite, Essar, Navneet, and Premier<sup>13</sup> data as the most representative of the shipment sizes of the respondents in the instant review.

#### **Department's Position:**

Pursuant to section 773(c)(1) of the Act, it is the Department's practice to use the best available information in valuing factors of production. As stated previously, the Department attempts to find the most representative and least distortive market based value in the surrogate country, and considers several factors, including the quality, specificity, and contemporaneity of the source information. The Department's preference would be to use an Indian brokerage and handling value specific to raw honey. However, as there is no acceptable B&H value that is specific to raw honey B&H, the Department must evaluate the available data to determine the best surrogate value. The Department finds, when considering the quality and specificity of the data on the record, that using a simple average of Agro Dutch and Kejrival values achieves the most representative value. Using an average of these values represents the broad spectrum of values that are available for a wide range of products and minimizes the potential distortions that might arise from a single price source. Given that all brokerage and handling surrogate values on the record are from public versions of data submitted in other antidumping duty proceedings, we find that they are all equally publicly available. *See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("Artist Canvas") at comment 2. The Department has determined to rely on the brokerage and handling values from Agro Dutch and Kejrival, and not to rely on the B&H value from Navneet, Essar and Pidilite.

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<sup>13</sup>Brokerage and handling data from Premier was put on the record by respondent in its brief at page 46, dated March 14, 2007.

In addition, the Agro Dutch and Kejirwal data are contemporaneous. Specifically, the Agro Dutch value corresponds to the 02/2004-01/2005 administrative review of the antidumping duty order on certain preserved mushrooms from India (*i.e.*, overlaps the POR by two months); and the Kejriwal values correspond to the 07/2004-06/2005 administrative review of the antidumping duty order on lined paper from India (*i.e.*, overlaps the POR by seven months).

We disagree with petitioners that we should rely on Pidilite's brokerage and handling value in these final results, because we have more contemporaneous information on the record that meets the surrogate value criteria, as suggested by respondent. As petitioners correctly point out, neither the statute nor the regulations speak to the issue of contemporaneity versus specificity, and case law has not delineated a bright line to rule on the matter. Therefore, the Department undertakes its analysis of valuing the factors of production on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) ("2005 Glycine Final") at Comment 1. There is no hierarchy for applying the above-stated principles. In this case, Pidilite's B&H data correspond to the 02-03 administrative review of the antidumping duty order on carbazole violet pigment 23, which is one to two years prior to the POR, whereas there are more contemporaneous sources available on the record.

Regarding respondent's suggestion that we use publicly available information regarding brokerage and handling from Navneet, a respondent in the *Certain Lined Paper Products from India* investigation, the Department concluded in the investigation that Navneet's information was not usable for the final determination and determined that the use of adverse facts available ("AFA") was appropriate for Navneet. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) ("CLPP") at Comment 14. In CLPP, the Department stated that it was unable to adequately determine whether the cost information contained in Navneet's responses reasonably and accurately reflect the costs incurred by Navneet to produce the subject merchandise. Consequently, for this review, we have declined to consider Navneet's brokerage and handling data for use in these final results.

As stated above, the brokerage and handling data available from Agro Dutch and Kejirwal are publicly available, contemporaneous with the POR and representative of a range of prices throughout the POR. Therefore, the Department will not rely on their brokerage and handling in our calculation of the surrogate brokerage and handling. *See Fresh Garlic from the People's Republic of China: Final Results of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007).

#### **Comment 5: Wage Rate Calculation**

Anhui Honghui contends that the Department's policy of calculating a surrogate value for labor using data from numerous countries runs contrary to NME methodology and that the Department

should not use its current practice of using regression analysis based on multiple countries. Respondent argues that the Department's use of a regression method based on 2003 data for calculating the expected wage rate is contrary to the statute and legal precedent. Specifically, respondent argues that, pursuant to 19 USC 1677b(c)(4), the Department should calculate wage rates based on economic comparability rather than using a regression analysis. Citing *Eurodif v. United States*, 411 F.3d 1355 (Fed. Cir. 2005), respondent argues that no regulation or administrative action has credence over the plain language of the statute. Based on alleged problems with the methodology, respondent asserts that the Department failed to explain how the updated regression calculation comports with the statute and legal precedents established by *Dorbest Ltd., et al. v. United States*, Slip-Op 06-160 (CIT, October 31, 2006) ("Dorbest"). Respondent alleges that the methodology problems include the use of countries at levels of economic development not similar to that of the PRC, and the 'arbitrary' exclusion of other countries, in making the analysis. Additionally, respondent argues that there is no record evidence that certain countries included in the analysis are significant producers of comparable merchandise. Therefore, respondent contends, the wage rate used in the preliminary results is both unlawful and biased.

Respondent argues that the regression methodology has produced a result significantly higher than their actual values for all countries considered economically comparable to the PRC. As an example, respondent compares the 2001 India rate (inflated to 2003) of \$0.23/hour, and compares it to the regression analysis prediction that a country with India's gross national income ("GNI") should be \$0.68/hour in 2003. Furthermore, respondent notes that a country with a GNI of zero would have a wage rate of \$0.40/hour under the regression analysis, indicating significant distortion according to respondent. Finally, respondent asserts that only 5 of the 30 countries with a GNI of less than \$10,000 had actual wages that are more than the projected wages under the regression analysis. Respondent also states that labor rates based on 2004 data suffer from similar distortions.

Respondent argues that the Department should use the most contemporaneous country-wide wage rate data for India (*i.e.*, 2004 wage rate of \$0.13/hr.), because this is consistent with section 773(c)(4) of the Act, and because India is "economically comparable," and is a significant producer of comparable merchandise.

In conclusion, respondent argues that, if the Department continues to use a regression-based labor calculation, it should use the updated wage rate calculation based on 2004 data. While respondent contends that the 2004 data also produces distorted results, it is more contemporaneous and based on a group of countries more consistent with the Department's selection criteria. *See* Respondent's Brief at 47-52.

In their rebuttal brief, petitioners argue that the Department should continue to use the wage rate calculation based on the regression method. Petitioners note that the Department reviewed similar arguments in prior segments of this proceeding, specifically ADR2 and ADR3, and the

Department continued to use the regression-based wage rate.<sup>14</sup> Petitioners also argue that Department should not modify its policy, because the wage rate was calculated in accordance with 19 CFR 351.408(c)(3), and the Department is not required to choose a single rate from single countries pursuant to section 773(c)(4) of the Act. Petitioners contend that, contrary to the respondent's assertions, the regression methodology is not distortive and biased. Rather, by using many countries in its calculation instead of just a few countries that are economically comparable to the PRC, the Department's regression methodology avoids variability and fairer to all parties. Petitioners also argue that while there is a strong correlation between wage rates and GNI, there is also variation in the wage rates of comparable countries. Therefore, according to petitioners, the 'distortions' claimed by respondent have already been addressed in the Department's current, reasonable methodology. *See* Petitioners' Rebuttal Brief at 51-55.

### **Department's Position:**

We agree with petitioners and continue to value wage rates using a regression analysis. However, we agree with respondent that the Department should use the 2004 data as the basis for its analysis.

The Department is not required by statute to limit its data set in its regression analysis to economically comparable countries; however, the Department considered this option.<sup>15</sup> The Department found that restricting the basket of countries to include only countries that are economically comparable to each NME is not feasible and would undermine the consistency and predictability of the Department's regression analysis. A basket of "economically comparable" countries could be extremely small.<sup>16</sup> For example, there are only seven countries with GNI less than U.S. \$1,500 in the Department's revised 2004 expected NME wage rate calculation and many NME countries' GNI are around this range. A regression based on an extremely small basket of countries would be highly dependent on each and every data point.

Moreover, relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, data from only two countries would be sufficient to calculate a precise regression line. However, as the Department has noted repeatedly, while there is a strong worldwide relationship between wage rates and GNI, there is nevertheless variability in the data. For example, in the data relied upon for the Department's revised 2004 calculation, observed wage rates did not increase in lockstep with increases in GNI in the seven countries with GNI less than U.S. \$1,500: Nicaragua, with a GNI of U.S. \$830, had

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<sup>14</sup> *See ADR2 Final Results*, at Comment 6, and *ADR3 Final Results*, at Comment 5.

<sup>15</sup> *See* Antidumping Methodologies: Market Economy Inputs, Expected Non- Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006).

<sup>16</sup> *See* Memorandum to the File through James C. Doyle, Director, Office 9, and Christopher D. Riker, Program Manager, AD/CVD Operation, Office 9, from Bobby Wong, International Trade Analyst, Office 9, and Kristina Horgan, Senior International Trade Analyst, Office 9, regarding Factors of Production Valuation Memorandum for the Final Results of Antidumping Administrative Review of Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof from the People's Republic of China (March 12, 2007) at Attachment 3.

reported a wage rate of U.S. \$0.85 per hour; while Sri Lanka, with a GNI of US\$1010, had reported a wage rate of U.S. \$0.35 per hour.

This inevitable variability in the underlying International Labour Organization (“ILO”) data are especially true in the case of countries with a lower GNI where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms. Because reliable wage rate data are available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME’s level of economic development via its GNI. Using the Department’s regression methodology, the value for labor in a particular country remains consistent despite the possible selection of different surrogate countries. This enhances the fairness and predictability of the Department’s calculations.

As stated above, a larger basket minimizes the effects of any single data point and, thereby, better captures the global relationship between wage rates and GNI. More data are, therefore, better than less data for the purposes of the Department’s regression analysis, provided it is suitable and reliable.<sup>17</sup>

In response to Anhui Honghui’s argument regarding the distortive effect of the regression model in predicting India’s wage rate, the Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME’s hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate.

While Anhui Honghui points specifically to India as an example of wages “overstated” by the regression calculation, there are a significant number of predicted wage rates that also are above the regression line, *i.e.*, economies for which the model would “understate” wage rates; in all, 23 of the 58 countries included in the model lie above the regression line. India’s wage rate is the lowest reported wage rate in the Department’s data set, despite not being the lowest GNI per capita. Still, the Department treats India’s wage rate not as an anomaly, but as another piece of data that informs the regression line. However, given that India’s wage rate is so much lower than that of other countries in relation to its GNI, any calculation that relies on data from other countries would overstate India’s actual reported wage. Because India’s wage rate is so low relative to its GNI, the regression, unsurprisingly, also “overstates” India’s wage rate, and can lead to an appearance of distortion, even where there is none, such that the calculated wage rate

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<sup>17</sup> See *Antidumping Duties; Countervailing Duties Part II*, 61 FR 7308, 7345 (February 27, 1996) and *Final Rule*, 62 FR at 27367.

falls within an acceptable margin of error.

The Department's regression methodology is superior to a single country's wage rate because the regression methodology ameliorates any country-specific distortion that would cause variation in the data, ties the estimated wage rate directly to each NME's GNI, and provides predictable results that are as accurate as possible. The Department finds that the regression-based methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates. By ensuring the data in the regression includes all earnings data that best reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data are less susceptible to both the country-by-country, as well as the as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor.

For these reasons, consistent with the regulation and the statute, the Department's revised wage rate calculation applied to this review relies on a significantly larger basket of countries than was used in the preliminary results. A larger basket maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. Importantly, the Department notes that economic comparability is established in the regression calculation through the GNI of the NME in question, which ensures that the result represents a wage rate for a country economically comparable to the NME. Using the revised data set, the recalculated wage rate for the PRC in this review is US\$0.83.

## **Comment 6: Clerical Errors**

### **A. Misreported Factory Overhead and SG&A Ratios**

Respondent argues that the Department inadvertently switched the factory overhead financial ratio and the SG&A financial ratios in its margin calculation programs. *See* Respondent's Brief at 53. Respondents cite to the Department's Factors of Production Valuation Memorandum from the *Preliminary Results*, stating that the Department correctly calculated the factory overhead ratio (*i.e.*, 11.53 percent) and the SG&A ratio (*i.e.*, 24.40 percent). *See* FOP Memo at Attachment 21. However, in the narrative section of the FOP Memo and in Anhui Honghui's margin calculation program itself, respondent states that the Department reversed these financial ratios.

Petitioner agrees that the Department inadvertently transposed the two ratios in Anhui Honghui's margin calculation program. However, it argues that this reversal causes no impact on the calculation of Anhui Honghui's margin.

### **Department's Position:**

We agree with respondent. The Department correctly calculated the factory overhead and SG&A ratios, as evidenced by the FOP Memo at Attachment 21. However, the Department inadvertently reversed the reporting of these two ratios in the narrative of the FOP Memo and within the context of Anhui Honghui's margin calculation program. As noted by petitioners, this reversal has no effect on the margin calculation itself. For these final results, we have corrected the application of these two ratios in the margin calculation programs and FOP Memo, ensuring the factory overhead and SG&A expenses match to the corresponding ratio.

### **B. Marine Insurance**

Respondent argues that the Department incorrectly applied the marine insurance rate to the gross unit price in Anhui Honghui's margin calculation program, thereby overstating the marine insurance expense. *See* Respondent's Brief at 53. Respondent contends that marine insurance expenses are incurred on the value of the merchandise, not the selling price, and therefore, the Department should recalculate the marine insurance expenses in the margin calculation program by applying them to entered value rather than gross unit price.

Petitioners argue that the Department appropriately applied the marine insurance expenses to the gross unit price, and that respondent's contention is unfounded. *See* Petitioners' Rebuttal Brief at 55. Petitioners argue that marine insurance is already based on a flat insurance rate, plus an additional "War Risk" fee, both based on a shipment of U.S. \$100 value. Additionally, petitioners contend that Anhui Honghui reports several terms of delivery in its sales database and, as such, the basis of its gross unit prices vary depending upon the particular delivery terms. Therefore, petitioners argue, it is not possible for Anhui Honghui to claim that applying the marine insurance rate to the gross unit price would over estimate marine insurance expenses.

### **Department Position:**

We agree with petitioners. We find that there is no basis upon which Anhui Honghui asserts its claim that marine insurance should be applied to the value of the merchandise rather than its selling price. The Department properly accounted for marine insurance in accordance with the Department's regulations at 19 CFR 351.410(a) and (c). The surrogate marine insurance value was calculated on a rate per \$1 value. *See* Prelim FOP Memo at Attachment 1. As such, the Department appropriately applied the marine insurance rate to Anhui Honghui's gross unit prices in order to derive the marine insurance cost. This methodology is consistent with the prior administrative review of honey from the PRC (*i.e.*, ADR3). *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006), and the Accompany Analysis Memorandum for Anhui Honghui. For these final results, the Department will continue to apply the surrogate value of marine insurance to reported the gross unit prices to capture these expenses in our analysis.

C. Packing Input Calculation: Drums

Respondent argues that the Department incorrectly multiplied the freight for drums by a factor of 22, as Anhui Honghui reported the freight distance in kilometers. *See* Respondent's Brief at 54. Respondent contends that multiplying the truck freight surrogate value and freight distance by 22 greatly overestimates the freight rate.

Petitioners contend that the Department correctly multiplied the drum freight calculation by 22. *See* Petitioners' Rebuttal Brief at 56. Petitioners argue that the Department multiplied the drum freight calculation by a factor of 22, because the surrogate value for drums is reported on a piece basis and multiplying the drum freight factor by 22 (*i.e.*, 22 kilograms, the reported weight of a single drum) converts the reporting basis from piece to kilogram per kilometer.

**Department Position:**

We agree with petitioners. It was the Department's intention to calculate a freight expense for drums on a kilogram per kilometer basis, as the surrogate value for drums is reported on a piece basis and is consistent with past determinations of this review. Accordingly, we have not changed our drum freight calculation for these final results.

D) Paint

Respondent made two separate arguments regarding the Department's calculation of the surrogate value for paint. First, respondent argues that the Department incorrectly calculated Anhui Honghui's factor for paint, claiming that Anhui Honghui reported paint on a milliliter basis, but that the Department failed to convert its paint consumption into kilograms (as the Department's surrogate value for paint is reported on a kilogram basis). Second, respondent argues that the Department inadvertently calculated the sum, rather than the average, of the two paint categories per the HTS (*i.e.*, aqueous and non-aqueous paint) in establishing its surrogate value for paint. *See* Respondent's Brief at 54 to 55. Respondent, therefore, contends that the Department should revise its calculation of the paint surrogate value by using the average of the two paint categories and, furthermore, revise the paint surrogate value with regard to Anhui Honghui to convert the company's reported milliliter consumption of paint to kilograms.

With regard to respondent's first argument, petitioners disagree, contending that Anhui Honghui reported its paint consumption in milliliters in the narrative of its section D response, but that in its FOP database submitted to the Department, Anhui Honghui's paint factor is reported in kilograms. *See* Petitioners' Rebuttal Brief at 57. Additionally, petitioners contend that the Department cannot be held accountable for Anhui Honghui's failure to accurately report its usage rates of its factors of production - especially at this late stage of the proceeding. With regard to respondent's second argument, petitioners provided no rebuttal.

**Department Position:**

We agree with petitioners, in part. The Department notes that in its original Section D response, Anhui Honghui explained in its narrative section of the response that it reported its usage of paint in milliliters. *See* Section C and D Responses of Anhui Honghui Foodstuff (Group) Co., Ltd.: Fourth Annual Review of Honey from the People’s Republic of China, dated May 1, 2006, (Section C and D Response) at page 14. However, in reviewing Anhui Honghui’s FOP database, we find that the company’s paint factor is already reported in kilograms. *See* Section C and D Response at Exhibit 1. Furthermore, the Department notes that Anhui Honghui’s Packing Material Consumption Sheet provided in its Section D response also calculates the company’s monthly consumption of paint and clearly indicates that Anhui Honghui’s reported unit consumption rate is on a kilogram basis. *See id.* at Exhibit 7. Finally, we reviewed each of the FOP databases submitted by Anhui Honghui during the course of this proceeding and found no indication that the data reported in its databases (which are the actual data used by the Department in its calculations) are on a milliliter basis. Therefore, the Department will not revise or convert Anhui Honghui’s reported consumption of paint for these final results.

With regard to respondent’s argument that the Department inadvertently reported the sum rather than the simple average of the two paint categories per the HTS, we find that the Department incorrectly calculated the paint surrogate value. *See* FOP Memo at page 5 and Attachment 4. Therefore, for these final results, we have revised the calculated paint surrogate value by averaging the values of the two paint categories per the HTS.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this review and the final weighted-average dumping margins of the reviewed companies in the *Federal Register*.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date